

1 **AGGRAVATED SEXUAL ABUSE OF A CHILD AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad R. Wilson**

5 Senate Sponsor: Todd Weiler

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Criminal Code regarding the offense of aggravated sexual abuse
10 of a child.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ modifies the offense of aggravated sexual abuse of a child by providing a definition
14 of the term "position of special trust".

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **76-5-309**, as last amended by Laws of Utah 2013, Chapter 196

22 **76-5-404.1**, as last amended by Laws of Utah 2013, Chapters 81 and 196

23 **76-5-406**, as last amended by Laws of Utah 2013, Chapter 196

24

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **76-5-309** is amended to read:

27 **76-5-309. Human trafficking and human smuggling -- Penalties.**



28 (1) Human trafficking for forced labor and human trafficking for forced sexual
29 exploitation are each a second degree felony, except under Section 76-5-310.

30 (2) Human smuggling, under Section 76-5-308 of one or more persons is a third degree
31 felony, except under Section 76-5-310.

32 (3) Human trafficking for forced labor or for forced sexual exploitation and human
33 smuggling are each a separate offense from any other crime committed in relationship to the
34 commission of either of these offenses.

35 (4) Under circumstances not amounting to aggravated sexual abuse of a child, a
36 violation of Subsection 76-5-404.1(4)(h)[(†)], a person who benefits, receives, or exchanges
37 anything of value from knowing participation in:

38 (a) human trafficking for forced labor or for forced sexual exploitation in violation of
39 Section 76-5-308 is guilty of a second degree felony; and

40 (b) human smuggling is guilty of a third degree felony.

41 (5) A person commits a separate offense of human trafficking or human smuggling for
42 each person who is smuggled or trafficked under Section 76-5-308 or 76-5-310.

43 Section 2. Section 76-5-404.1 is amended to read:

44 **76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.**

45 (1) As used in this section[~~,"child" means a person under the age of 14.~~]:

46 (a) "Adult" means an individual 18 years of age or older.

47 (b) "Child" means an individual under the age of 14.

48 (c) "Position of special trust" means:

49 (i) an adoptive parent;

50 (ii) an athletic manager who is an adult;

51 (iii) an aunt;

52 (iv) a babysitter;

53 (v) a coach;

54 (vi) a cohabitant of a parent if the cohabitant is an adult;

55 (vii) a counselor;

56 (viii) a doctor or physician;

57 (ix) an employer;

58 (x) a foster parent;

- 59 (xi) a grandparent;
- 60 (xii) a legal guardian;
- 61 (xiii) a natural parent;
- 62 (xiv) a recreational leader who is an adult;
- 63 (xv) a religious leader;
- 64 (xvi) a scout leader who is an adult;
- 65 (xvii) a stepparent;
- 66 (xviii) a teacher;
- 67 (xix) an uncle;
- 68 (xx) a youth leader who is an adult; or
- 69 (xxi) any person in a position of authority, other than those persons listed in
- 70 Subsections (1)(c)(i) through (xx), which enables the person to exercise undue influence over
- 71 the child.

72 (2) A person commits sexual abuse of a child if, under circumstances not amounting to
 73 rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these
 74 offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female
 75 child, or otherwise takes indecent liberties with a child, or causes a child to take indecent
 76 liberties with the actor or another with intent to cause substantial emotional or bodily pain to
 77 any person or with the intent to arouse or gratify the sexual desire of any person regardless of
 78 the sex of any participant.

79 (3) Sexual abuse of a child is [~~punishable as~~] a second degree felony.

80 (4) A person commits aggravated sexual abuse of a child when in conjunction with the
 81 offense described in Subsection (2) any of the following circumstances have been charged and
 82 admitted or found true in the action for the offense:

83 (a) the offense was committed by the use of a dangerous weapon as defined in Section
 84 [76-1-601](#), or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or
 85 was committed during the course of a kidnapping;

86 (b) the accused caused bodily injury or severe psychological injury to the victim during
 87 or as a result of the offense;

88 (c) the accused was a stranger to the victim or made friends with the victim for the
 89 purpose of committing the offense;

90 (d) the accused used, showed, or displayed pornography or caused the victim to be
91 photographed in a lewd condition during the course of the offense;

92 (e) the accused, prior to sentencing for this offense, was previously convicted of any
93 felony, or of a misdemeanor involving a sexual offense;

94 (f) the accused committed the same or similar sexual act upon two or more victims at
95 the same time or during the same course of conduct;

96 (g) the accused committed, in Utah or elsewhere, more than five separate acts, which if
97 committed in Utah would constitute an offense described in this chapter, and were committed
98 at the same time, or during the same course of conduct, or before or after the instant offense;

99 (h) the offense was committed by a person who occupied a position of special trust in
100 relation to the victim; [~~"position of special trust" means that position occupied by a person in a~~
101 ~~position of authority, who, by reason of that position is able to exercise undue influence over~~
102 ~~the victim, and includes, but is not limited to, a youth leader or recreational leader who is an~~
103 ~~adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor,~~
104 ~~employer, foster parent, babysitter, adult scout leader, natural parent, stepparent, adoptive~~
105 ~~parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;]~~

106 (i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or
107 sexual acts by the victim with any other person, or sexual performance by the victim before any
108 other person, human trafficking, or human smuggling; or

109 (j) the accused caused the penetration, however slight, of the genital or anal opening of
110 the child by any part or parts of the human body other than the genitals or mouth.

111 (5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of
112 imprisonment of:

113 (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and
114 which may be for life;

115 (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact
116 finds that during the course of the commission of the aggravated sexual abuse of a child the
117 defendant caused serious bodily injury to another; or

118 (c) life without parole, if the trier of fact finds that at the time of the commission of the
119 aggravated sexual abuse of a child, the defendant was previously convicted of a grievous
120 sexual offense.

121 (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a
122 lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and
123 states the reasons for this finding on the record, the court may impose a term of imprisonment
124 of not less than:

125 (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

126 (b) for purposes of Subsection (5)(a) or (b):

127 (i) 10 years and which may be for life; or

128 (ii) six years and which may be for life.

129 (7) The provisions of Subsection (6) do not apply when a person is sentenced under
130 Subsection (5)(c).

131 (8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18
132 years of age at the time of the offense.

133 (9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.
134 Section 3. Section 76-5-406 is amended to read:

135 **76-5-406. Sexual offenses against the victim without consent of victim --**
136 **Circumstances.**

137 An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a
138 child, object rape, attempted object rape, object rape of a child, attempted object rape of a
139 child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a
140 child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse,
141 sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child,
142 attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the
143 victim under any of the following circumstances:

144 (1) the victim expresses lack of consent through words or conduct;

145 (2) the actor overcomes the victim through the actual application of physical force or
146 violence;

147 (3) the actor is able to overcome the victim through concealment or by the element of
148 surprise;

149 (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the
150 immediate future against the victim or any other person, and the victim perceives at the time
151 that the actor has the ability to execute this threat; or

152 (ii) the actor coerces the victim to submit by threatening to retaliate in the future
153 against the victim or any other person, and the victim believes at the time that the actor has the
154 ability to execute this threat;

155 (b) as used in this Subsection (4), "to retaliate" includes threats of physical force,
156 kidnapping, or extortion;

157 (5) the victim has not consented and the actor knows the victim is unconscious,
158 unaware that the act is occurring, or physically unable to resist;

159 (6) the actor knows that as a result of mental disease or defect, the victim is at the time
160 of the act incapable either of appraising the nature of the act or of resisting it;

161 (7) the actor knows that the victim submits or participates because the victim
162 erroneously believes that the actor is the victim's spouse;

163 (8) the actor intentionally impaired the power of the victim to appraise or control his or
164 her conduct by administering any substance without the victim's knowledge;

165 (9) the victim is younger than 14 years of age;

166 (10) the victim is younger than 18 years of age and at the time of the offense the actor
167 was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of
168 special trust in relation to the victim as defined in ~~[Subsection]~~ Section 76-5-404.1~~[(4)(h)]~~;

169 (11) the victim is 14 years of age or older, but younger than 18 years of age, and the
170 actor is more than three years older than the victim and entices or coerces the victim to submit
171 or participate, under circumstances not amounting to the force or threat required under
172 Subsection (2) or (4); or

173 (12) the actor is a health professional or religious counselor, as those terms are defined
174 in this Subsection (12), the act is committed under the guise of providing professional
175 diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed
176 that the act was for medically or professionally appropriate diagnosis, counseling, or treatment
177 to the extent that resistance by the victim could not reasonably be expected to have been
178 manifested; for purposes of this Subsection (12):

179 (a) "health professional" means an individual who is licensed or who holds himself or
180 herself out to be licensed, or who otherwise provides professional physical or mental health
181 services, diagnosis, treatment, or counseling including, but not limited to, a physician,
182 osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist,

183 social service worker, clinical social worker, certified social worker, marriage and family
184 therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse
185 specialist, or substance abuse counselor; and

186 (b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized
187 member of the clergy.

Legislative Review Note
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Office of Legislative Research and General Counsel